

FIRST AMENDMENT TO CONTRACT
A56-5-05-62

This is an amendment to the Agreement entered into by and between the **Office of the Indiana Attorney General** (hereinafter "State") and **Robert D. Swhier** (hereinafter "Contractor").

The State and Contractor have agreed to amend the original agreement.

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

The Contractor's correct name for purposes of this Agreement should be Swhier Law Group, P.C. All references in the Agreement to Robert D. Swhier are now references to Swhier Law Group, P.C.

This amendment shall take effect upon execution.

All other matters previously agreed to and set forth in the original agreement and not affected by this amendment shall remain in full force and effect.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member, or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of this agreement.

THE REST OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

IN WITNESS WHEREOF, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the foregoing terms of the Agreement do by their respective signatures dated below hereby agree to the terms thereof.

Swhier Law Group, P.C.

Indiana Attorney General

By: [Signature]
Title President

By: [Signature]
Stephen Carter
Attorney General of Indiana

Date: 2-22-06

Date: 2-23-06

APPROVED BY:

DEPARTMENT OF ADMINISTRATION

OFFICE OF MANAGEMENT AND BUDGET

By: [Signature] For (for)
Earl A. Goode,
Commissioner

By: [Signature] (for)
Charles E. Schalliol,
Director

Date: 3-1-06

Date: 3/2/2006

APPROVED AS TO FORM AND
LEGALITY:

By: [Signature] (for)
Stephen Carter,
Attorney General of Indiana

Date: 3-14-06

AGREEMENT WITH IN-HOUSE COUNSEL

THIS AGREEMENT ("this Agreement") is between the Office of the Indiana Attorney General (hereinafter the "OAG") and Robert D. Swhier, P.C. f/s/o Robert D. Swhier (hereinafter "Contractor").

WHEREAS, the OAG desires to engage Contractor to provide the legal services more fully described in paragraph one (1) below, (the "Legal Services"), and Contractor represents that he is qualified to provide the Legal Services.

NOW THEREFORE, in consideration of the premises and the mutual promises and covenants set forth below, it is agreed by and between the OAG and Contractor as follows:

1. **Duties of Contractor.** Contractor shall serve as in-house counsel on all work that requires private sector knowledge and experience and provide specialized services to client state agencies. These duties shall include, but not be limited to, (1) review and advice on complex transactional work; (2) assist with oversight of non-profits; (3) assist with review of bond matters; and (4) other duties as assigned by the OAG. Pursuant to IC 4-6-5-3, the Indiana Attorney General hereby appoints, employs and hires Contractor to provide the Legal Services. Contractor shall execute his responsibilities by following and applying the highest professional standards.
2. **Consideration.** Contractor shall be paid at the annualized rate of one hundred eighteen thousand dollars and eight cents (\$118,000.08) or nine thousand eight hundred thirty-three dollars and thirty-four cents (\$9,833.34) a month. This amount is based on the salary of a senior level Deputy Attorney General plus all benefits and paid leave. The OAG and Contractor are entering into this exclusive Agreement to allow Contractor to transition from private practice to public sector work. The Contractor will become an OAG employee upon mutual agreement of the parties that the transition period is complete or on December 31, 2006 whichever comes first. Contractor shall submit monthly invoices to the OAG showing with particularity the date and description of the Legal Services rendered. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20.
3. **Term.** This Agreement is for a period beginning on January 1, 2006 and ending on December 31, 2006. It may be renewed or extended only by written agreement.
4. **Access to Files and Records.** The OAG shall have full, immediate, and unrestricted access to the work product of the Contractor during the term of this Agreement. Upon termination or expiration of this Agreement, Contractor shall, without further request and at no cost to the OAG, turn over to the OAG all files relating to the work performed under this Agreement. Contractor acknowledges that he may be required to submit to an audit of funds paid pursuant to this Agreement, and shall maintain at his offices all books, accounting records, and other evidence pertaining to costs incurred and invoiced under this Agreement. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration, for inspection by the OAG or its authorized designee. Copies thereof shall be furnished at no cost to the OAG if requested.
5. **Assignment.** Contractor shall not assign any part of the Legal Services to be performed under this Agreement to a third party.
6. **Changes in Work.** Contractor shall not change scope of the Legal Services to be performed pursuant to this Agreement or undertake additional work on behalf of the OAG unless authorized in writing by the OAG. No claim for additional compensation shall be made in the absence of a prior written agreement.

7. **Compliance with Laws.**

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. **The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the OAG and the Contractor to determine whether the provisions of this Agreement require formal modification.**

B. The Contractor shall abide by all ethical requirements that apply to persons who have a business relationship with the OAG, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the State Ethics Commission, or visit the State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If the Contractor violates any applicable ethical standards, the OAG may, in its sole discretion, terminate this Agreement immediately upon notice to the contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6-12.

C. The Contractor certifies by entering into this Agreement, that neither he nor his principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Contractor is current in his payments and has submitted proof of such payment to the OAG.

D. The Contractor warrants that he has no pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that he will immediately notify the State of any such actions.

E. The Contractor warrants that he shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the OAG. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work with the OAG.

F. *The Contractor affirms that he is properly registered and owes no outstanding reports with the Indiana Secretary of State.*

G. Contractor agrees that the OAG may confirm, at any time, that no liabilities exist to the State, and, if such liabilities are discovered, that OAG may bar Contractor from contracting with the OAG in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the Contractor is current in his payments on his liability to the State and has submitted proof of such payment to the OAG.

H. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations], or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) *except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7* in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by

federal law.

8. Conflict of Interest.

A. Contractor represents and warrants that, after due and diligent inquiry, he is satisfied that he has no Conflict of Interest (as that term is defined in the *Indiana Rules of Professional Conduct*) that will preclude him from providing the Legal Services.

B. Contractor represents and warrants that he has reviewed and is familiar with the statutes and regulations relating to the ethical conduct of state employees. Contractor certifies that, after due inquiry, no partner or any spouse or unemancipated child of any partner (collectively, an "Interested Party"), is an employee of the State of Indiana. If an Interested Party is an employee of the State of Indiana, Contractor shall provide the OAG with an opinion by the State Ethics Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the Interested Party does not violate any statute or regulation relating to the ethical conduct of state employees.

9. Drug-Free Workplace. As required by Governor's Executive Order No. 90-5 dated April 12, 1990, Contractor certifies and agrees that he will provide a drug-free workplace by:

A. Publishing and providing to all of his employees a statement notifying his employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform his employees of (1) the dangers of drug abuse in the workplace; (2) Contractor's policy of maintaining a drug-free workplace; (3) any available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A), above, that as a condition of *continued employment the employee will (1) abide by the terms of the statement; and (2) notify Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and*

D. Notifying in writing the OAG within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

10. Funding Cancellation. When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

11. Governing Laws. This Agreement shall be construed in accordance with, and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

12. **Indemnification.** Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits, including court costs, attorney's fees, and other expenses caused by any act or omission of Contractor.

13. **Independent Contractor.** Contractor and the OAG are acting in their individual capacities and not as employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees of the other party. Contractor shall be responsible for providing all necessary unemployment and worker's compensation insurance for his employees.

14. **Key Person.** The parties agree and acknowledge that Bob Swhier is a key person to this Agreement, and that all duties and deliverables rendered pursuant to this Agreement shall be performed by Bob Swhier.

15. **Nondiscrimination.** As required by IC 22-9-1-10 and the federal Civil Rights Act of 1964, Contractor shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or in any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Acceptance of this Agreement signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

16. **Notice to Parties.** Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses by U.S. first class mail, postage prepaid.

A. Notice to the OAG shall be sent to:
Gregory F. Zoeller, Chief Deputy
Office of the Attorney General
302 W. Washington St., IGCS-5th Floor
Indianapolis, IN 46204

B. Notice to Contractor shall be sent to:
Bob Swhier
334 North Senate Avenue
Indianapolis, IN 46204

17. **Penalties/Interest/Attorney's Fees.** The OAG will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, finance charges, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 *et seq.*, IC 34-54-8-5, and IC 34-13-1-6.

18. **Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions.

19. **Taxes.** The State of Indiana is exempt from state, federal and local taxes. The OAG will not be responsible for any taxes levied on Contractor as a result of this Agreement.

20. **Termination.** This Agreement may be terminated, in whole or in part, by the OAG whenever, for any reason, the OAG determines that such termination is in the best interest of the OAG. Termination of services shall be affected by delivery to the Contractor of a Termination Notice at least fifteen (15) business days prior to the termination effective date, specifying the extent to which performance of services under

such termination becomes effective. Contractor may terminate this Agreement as provided by Rule 1.16, *Indiana Rules of Professional Conduct*.

21. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

22. Binding Authority; Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, he has been duly authorized to execute this Agreement on behalf of the entity designated below, and that he has not, nor has any other partner, associate, member, employee, representative, agent, or officer of the entity designated below, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Agreement, other than that which appears upon the face of this Agreement.

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IN WITNESS WHEREOF, Contractor and the OAG by their duly authorized representatives have executed this Agreement as of the dates set forth below.

Robert D. Swhier, P.C. f/s/o Robert D. Swhier

Indiana Office of the Attorney General

By: Robert D. Swhier

By: [Signature] (for)
Stephen Carter, Attorney General

Atty #: 777-49

Date: 12-30-05

Date: 12/30/05

Approved by
DEPARTMENT OF ADMINISTRATION

Approved by
STATE BUDGET AGENCY

By: Susan H. Goode (for)
Earl Goode, Commissioner

By: Zachary D. Goode (for)
Charles Schalliot, Director

Date: 1-24-06

Date: 1/25/2006

Approved As To Form And Legality:

By: Elizabeth A. Brown (for)
Stephen Carter, Attorney General

Date: 1-14-06